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Vikas Adhikari, Panchayat Samiti, Sadulshahar
Vs.
Labour Court, Bikaner & Others

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

: O R D E R :

Vikas Adhikari, Panchayat Samiti, Sadulshahar
Vs.
Labour Court, Bikaner & Others
(S.B. Civil Writ Petition No.4633/1996)

DATE OF ORDER :

December 04, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. A.K. Rajwanshi for the petitioner.
Mr. Harish Purohit for the respondents.

BY THE COURT :

In this writ petition, initially the petitioner Vikas Adhikari, Panchayat Samiti, Sadulshahar (Sriganganagar) challenged the award dated 06.06.1994 as well as notification dated 12.09.1994 and it was further prayed that order dated 19.07.2004 passed by the Judge, Labour Court, Sriganganagar may be quashed. Thereafter, order passed under Section 33 (C) (2) of the Act by the Judge, Labour Court,

Sriganganagar was also challenged and, for that purpose, amendment was made in the writ petition and the said amendment was allowed vide order dated 14.12.2006. Thus, now the order impugned dated 19.07.2004 (Annex.-21) is also under challenge.

According to the facts stated in the writ petition, for better implementation of the relief work programme, the State Government directed each Panchayat Samiti to engage Junior Engineers and other staff on daily-wage basis. As per the directions of the State Government, the Collector/Project Director was authorized to hold interview and prepare panel at district-level and the Vikas Adhikari of the Panchayat Samiti could then engage the persons from amongst those named in the panel. Respondent No.2 was selected by the District Rural Development Agency, Sriganganagar as Junior Engineer and he was sent to the Panchayat Samiti, Sadulshahar for appointment on daily-wage basis under the National Rural Employment Programme (N.R.E.P. Scheme) which was promulgated by the Government.

The aforesaid appointment of respondent No.2 was made on 15.03.1988 by the Panchayat Samiti, Sadulshahar. It is further stated that in pursuance of the directions of the Government, the Collector (Development), Sriganganagar vide order dated 13.01.1989 directed the Vikas Adhikari, Panchayat Samiti, Sadulshahar to terminate the services of Junior Engineer working in the NREP Scheme. By way of filing S.B. Civil Writ Petition No.347/1989, the respondent No.2 challenged the validity of the order dated 13.01.1989 (Annex.-5) and,

therein, the operation of the order passed by the Addl. Collector (Development), Sriganganagar for terminating the services of Junior Engineers working in NREP/RLEPG project was stayed by this Court. The respondent No.2 continued on the said post till final adjudication of the said writ petition vide order dated 17.02.1992.

As per the petitioner, the order passed by the Addl. Collector (Development), Sriganganagar for terminating the services of the Junior Engineers working in the project was maintained by this Court, therefore, vide order dated 24.02.1992 respondent's services were brought to an end. Against said termination of services, an industrial dispute was raised by respondent No.2 before the Conciliation Officer and, upon failure of the conciliation proceedings, the matter was sent to the appropriate Government and vide notification dated 24.02.1994, the following dispute was referred to the Judge, Labour Court, Bikaner for adjudication :

"क्या श्री बलविन्द्र सिंह पुत्र जीतसिंह कनिष्ठ अभियन्ता को नियोजक विकास अधिकारी पंचायत समिति सादुलशहर जिला श्री गंगानगर द्वारा दिनांक 24.2.92 को सेवा से हटाया जाना उचित एवं वैध है यदि नहीं तो श्रमिक किस राहत एवं राशि को पाने का अधिकारी है ?"

The respondent workman was called upon to file his claim before the Judge, Labour Court. The workman submitted that his services were terminated on 24.02.1992 in violation of provisions of Section 25F, 25G and 25H of the Industrial Disputes Act. Notices were issued to the petitioner Vikas

Adhikari, Panchayat Samiti, Sadulshahar and the same were served in the office of the Panchayat Samiti. However, nobody appeared before the Labour Court on 12.05.1994, the date on which the employer non-claimant's appearance was required.

Upon non-appearance of the employer non-claimant, the Judge Labour Court, Bikaner passed order ex parte and granted opportunity to the workman to produce his evidence in support of the claim. The respondent workman filed his affidavit alongwith other documents. After hearing the arguments of the workman, vide award dated 6th June, 1994, the Judge, Labour Court, Bikaner reached conclusion that services of the respondent workman was dispensed with in violation of Section 25F of the Industrial Disputes Act. Accordingly, the reference was answered in favour of the respondent No.2 and order dated 24.02.1992 was set aside by the learned Judge, Labour Court, Bikaner and order was passed for reinstatement of the workman respondent in service with the benefit of continuity of service. However, the workman was held not entitled to receive salary for the period from 25.02.1992 upto 30.11.1993 and order was made for payment of salary with effect from 01.12.1993. The award passed by the Judge, Labour Court, Bikaner was notified and published in the official gazette.

Thereafter, by way of filing the present writ petition, petitioner Vikas Adhikari, Panchayat Samiti, Sadulshahar challenged the award. The writ petition was filed after lapse of nearabout 2 years on 20.02.1996.

Learned counsel for the petitioner vehemently contended that appointment of respondent No.2 was made in a particular project and upon directions of the State Government his services were ordered to be terminated by the Addl. Collector (Development), Sriganganagar vide telegraphic order dated 13.01.1989 which runs as under :

"एन.आर.ई.पी./आर.एल.ई.जी.पी. में कार्यरत दैनिक वेतन कनिष्ठ अभियन्ताओं को तुरंत प्रभाव से कार्य मुक्त कर इस कार्यालय को सूचित करें।"

The said order was stayed by this Court and, thereafter, after dismissal of the writ petition filed by the respondent No.2, his services were terminated vide order dated 24.02.1992. According to the petitioner, at the time of termination of the respondent's services compliance of Section 25F was made and retrenchment was made in accordance with the provisions of the Industrial Disputes Act. It is contended on behalf of the petitioner that the impugned award is erroneous and order of termination was wrongly set aside by the Judge, Labour Court on the ground that Section 25F was violated.

Learned counsel for the petitioner vehemently argued that respondent No.2 was given appointment in a particular project and later on his services were terminated as per direction of the State Government. According to learned counsel for the petitioner, after dismissal of the writ petition filed by the respondent workman, order dated 24.02.1992 terminating the services of the workman was passed after compliance with the provisions of the Industrial Disputes Act and, therefore, there was no illegality in the order but the learned Judge, Labour Court erroneously arrived at the finding that termination of services of the respondent workman was illegal. It is further contended that the award was passed ex parte, however, the learned Judge, Labour Court was under obligation to pass the award in accordance with law whereas the Labour Court has failed to consider important aspect of the matter that the workman was provided appointment in a particular scheme and, after completion of the scheme, the services of the respondent workman were rightly terminated and, furthermore, while passing the order dated 24.02.1992 the petitioner fully complied with the provisions of Section 25F of the Act.

It is next contended on behalf of the petitioner that during the pendency of this writ petition, the respondent was gainfully employed, therefore, as

ordered by this Court upon application under Section 17B, payment of salary for the period during which he was not in employment was made to the respondent workman. It is further submitted that during the pendency of the writ petition, the award was not stayed by this Court, therefore, application under Section 33C (2) was filed before the Judge, Labour Court for payment of salary arising out of the award. However, the fact remains that as per order of this Court passed under Section 17B, the respondent No.2 was paid salary last drawn by him till the date he remained out of job. Since the respondent moved application under Section 33C(2) before the Labour Court, Sriganganagar, vide order dated 19.07.2004 the Labour Court passed order for payment of salary alongwith interest at the rate of 6 per cent, therefore, that order is also sought to be challenged by way of amendment of the writ petition.

In that regard, learned counsel for the petitioner argued that there was no occasion for the Labour Court to pass order under Section 33C(2) in view of the fact that application under Section 17B was moved before this Court during the pendency of the writ petition and, if no payment was made in compliance of that order, then, the workman ought to have taken recourse to the remedy under the law; but, the workman illegally sought remedy by way of making application

before the Labour Court under Section 33C(2) during the pendency of the present writ petition. According to him, therefore, the order dated 19.07.2004 passed by the Judge, Labour Court under Section 33C (2) is erroneous and illegal.

On the other hand, learned counsel for the respondent workman vehemently opposed the prayer of the petitioner and apprised this Court that in the judgment rendered in the earlier writ petition an opportunity was granted to the respondent workman to avail himself of the remedy available under the Industrial Disputes Act as he agitated that his termination is in violation of Section 25F of the Industrial Disputes Act. He has referred to para 9 of the judgment reported in WLR 1992 (S) Raj 611. Para 9 and 16 of the cited judgment run as under :

“As I have already stated hereinabove, all the petitioners, in the petitions which are being disposed of by this order, who were directly appointed by the D.R.D.As. Or the Panchayat Samities, as the case may be, and, their services were not extended on the expiry of their term of service. In view of the aforesaid decision with which I am in agreement. It is apparent that the relief of reinstatement to the petitioners for the posts under Jawahar Rozgar Yojna in the present case cannot be granted as a consequence of abolition of posts under Jawahar Rozgar Yojna, which has been held to be bonafide. So far as the question of determination of their rights under Industrial Disputes Act, 1947 is concerned, the same has been left open to be decided by an appropriate forum under the Industrial Disputes Act, as it was rightly observed that it involves disputed question

of facts and very many facets of the Scheme and other aspects. Therefore, in these case I too am not inclined to examine all these issues. The petitioners are free to pursue their remedy under the Act of 1947, if any, where it will be open to them to raise any question which they want to raise before this Court.

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It has further been contended by the learned counsel for the petitioners that posts were abolished with effect from 28.2.1991, that is to say, the posts at various employing agencies were continuing upto 28.2.1991 where in many cases where the termination of service has been brought about prior to 28.2.1991, the incumbent should at least be deemed to be continuing on the post upto 28.2.1991 and they should be allowed emoluments upto the post upto 28.2.1991. However, in making this contention, one fact has been lost sight that appointment is not by one employer but is by different employers. The employment was offered upto a fixed date and the cases are such where appointments have not been extended beyond the particular date for want of sanction for extension of posts' term. May be, that in some cases some of the employers have continued the incumbents in expectation of extension of the term of the post but that does not confer employees of another employing agency right to be continued on the similar post on the ground that other employers have followed a different course. Even otherwise, the question whether such appointments are covered by the definition of removal within the exception to the definition of retrenchment, given under Sec.2(oo) of the Act of 1947, is a question which properly fall to be decided by an appropriate forum under Industrial Disputes Act, by taking into consideration the relevant factors and material placed on record before them. As has already been stated above, the rights under the Act of 1947 have been left open to be agitated before a forum under the Industrial Disputes Act, this relief cannot

be considered under the present
circumstances.”

with reference to the above-quoted observations in the reported judgment, it is contended that in this view of the matter, after dismissal of the writ petition when order of termination was passed by the petitioner Panchayat Samiti, then, by way of raising the industrial dispute before the conciliation officer, the matter was agitated by the non-petitioner. Upon the failure report, the appropriate Government referred the question with regard to illegal termination of the services of the respondent to the Judge, Labour Court, Bikaner.

It is further argued that the petitioner is not entitled to be heard because notice was served in the office of the petitioner Panchayat Samiti, however, nobody appeared before the Labour Court and, therefore, the learned Judge, Labour Court proceeded ex parte against the Panchayat Samiti to adjudicate upon the matter and, after taking evidence on record, finally gave its finding that the services of the respondent workman was dispensed with in violation of section 25F (a) and (b) and order for reinstatement was passed vide judgment/award dated 06.06.1994. Learned counsel for the respondent invited my attention towards the case of one Sukhvinder Singh, who was also appointed as

Junior Engineer like the respondent workman, and in whose favour the Judge, Labour Court passed order for reinstatement while setting aside the termination order. It is submitted that in the case of Sukhvinder Singh, the Award was challenged by the D.R.D.A., Sriganganagar by way of filing writ petition before this Court bearing S.B. Civil Writ Petition No.278/1998; and, this Court has dismissed the writ petition filed against the Award and held that the matter was not contested before the Judge, Labour Court by way of filing reply and adducing evidence. In that writ petition also, the respondent workman was working in the project in which the respondent workman, in the present writ petition, was working and this Court dismissed the writ petition filed against the ex parte award. Against the judgment passed by the learned Single Judge, special appeal was preferred before the Division Bench and the Division Bench also dismissed the special appeal filed by the District Rural Development Agency on 16.03.2000; and, finally, both those judgments were challenged before the Hon'ble Supreme Court in Civil Appeal No.5147/2001. The Supreme Court upheld the order passed by the learned Single Judge as well as Division Bench of this Court. The Supreme Court held that termination of services of the workman working in the project, like the respondent workman in this case,

was terminated without following the provisions of Section 25F of the Industrial Disputes Act.

Learned counsel for the respondent workman vehemently argued that in similar circumstances, when this Court has dismissed the writ petition filed against the award and refused to interfere with the finding of fact recorded by the learned Judge, Labour Court, then, in the present matter also, there is no occasion for interfering with the finding of the Judge, Labour Court in exercise of supervisory jurisdiction of this Court under Articles 227 of the Constitution of India. It is, therefore, prayed by learned counsel for the respondent workman that admittedly the respondent worked with the Panchayat Samiti for four years, then, he was to be given proper retrenchment compensation in accordance with Section 25F (a) and (b) and the provisions were, however, not complied with. Therefore, the Judge, Labour Court has rightly observed that the termination of the workman's services was in violation of Section 25F of the Industrial Disputes Act.

It is submitted by learned counsel for the respondent that the proceedings under Section 33C(2) is apparently execution proceedings and with a view to securing compliance order dated 19.07.2004 was passed by the Judge, Labour Court upon

application filed under Section 33C (2) of the Industrial Disputes Act; and, in the event of the pendency of the writ petition before this Court, the only option was left with the respondent to file application for execution of the order passed by this Court under Section 17B, therefore, there is no illegality in the order passed by the Labour Court under Section 33C (2). According to learned counsel for the respondent workman there is no force in the contention of the petitioner that the Labour Court has wrongly passed order on the workman's application filed under Section 33C (2) for payment of the undisputed amount.

I have carefully considered the record of the case and also perused the judgments referred to by learned counsel for the respective parties.

In my opinion, in the earlier writ petition, the order of the Addl. Collector (Development) sent through telegraphic message dated 13.01.1989 was under challenge and the question of applicability of the Industrial Disputes Act and/or violation of Section 25F of the Act while terminating the services of respondent No.2 was not there. Therefore, though the earlier writ petition was dismissed but liberty was given to the workman for agitating his matter under the Industrial Disputes Act. It is also obvious that until the decision of this Court dated

17.02.1992 in the earlier writ petition filed by the petitioner, there was no termination order passed by the petitioner Panchayat Samiti. The impugned order was passed on 24.02.1992 which was in question before the learned Judge, Labour Court and the learned Labour Court has decided the matter to the extent of validity of order dated 24.02.1992 passed for terminating the services of the respondent workman.

Bare perusal of order Annex.-7 dated 24.02.1992 shows that by this order the services of the respondent workman was terminated and 25 days' compensation was given to the respondent. The learned Judge, Labour Court while observing in the Award dated 06.06.1994 that the workman had worked for four years with the department, therefore, at the time of terminating his services on 24.02.1992, he was to be given total compensation for two months alongwith notice but the said amount was not paid, therefore, his termination was in violation of Section 25F (a) and (b) of the Act. It may further be noticed that though notices issued by the Labour Court, Bikaner were serviced upon the petitioner Panchayat Samiti; but, the Panchayat Samiti did not care to appear before the Labour Court and the learned Judge, Labour Court was constrained to proceed ex parte in the matter. In the present proceedings also, the

award passed by the Labour Court has been challenged after lapse of two and a half years. Therefore, upon the conduct of the petitioner Panchayat Samiti, no interference is required to be made.

Moreover, This Court would not be inclined to interfere in the finding of fact in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. In identical writ petition, this Court refused to interfere in the award passed by the Judge, Labour Court dated 27.01.1999 and the said order underwent challenge upto the Supreme Court and the order was maintained. Therefore, there does not arise occasion for interference in the finding of fact recorded by the learned Judge, Labour Court, Bikaner vide the impugned award.

As regards challenge to the validity of the order passed by the Labour Court under Section 33C (2) of the Industrial Disputes Act, in my opinion, the proceedings is in the nature of execution proceedings and, as per the language of Section 33C (2) itself, any undisputed amount arising out of any award may be claimed by the workman. Obviously, in the present matter, effect and operation of the impugned award was not stayed, therefore, the Labour Court has rightly exercised jurisdiction while passing order on the workman's application moved under

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Section 33C (2) of the Industrial Disputes Act. Hence no interference is required in the order dated 19.07.2004 also.

No other contention was raised by the petitioner.

For the fore-going reasons, I do not find any force in the writ petition. Accordingly, the writ petition is dismissed.

(Gopal Krishan Vyas) J.